

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

FILED

2005 SEP 14 P 2:59

U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY 4  
DEPUTY

SANTANA BUSTAMANTE,  
INDIVIDUALLY AND AS NEXT  
FRIEND OF DIANA VILLALOBOS AND  
AS REPRESENTATIVE OF THE  
ESTATE OF ANGEL VILLALOBOS,  
DECEASED, AND FOR AND ON  
BEHALF OF ALL THOSE ENTITLED  
TO RECOVER FOR HIS DEATH  
UNDER THE TEXAS WRONGFUL  
DEATH AND SURVIVAL ACTS, JOSE  
CRUZ VILLALOBOS, INDIVIDUALLY,  
MICAELA VILLALOBOS,  
INDIVIDUALLY AND AS NEXT  
FRIEND OF JOSE VILLALOBOS, AND  
ANABELI VILLALOBOS, MINOR  
CHILDREN, MARIA ROMAN  
BUSTAMANTE, ELIDA ROMAN,  
HECTOR BUSTAMANTE AND SANDY  
BUSTAMANTE

Plaintiffs

VS.

COOPER TIRE & RUBBER COMPANY,

Defendant.

CIVIL ACTION NO. SA04CA0591 OG  
(Jury Requested)

**SECOND UNOPPOSED MOTION FOR CONTINUANCE  
AND EXTENSION OF DISCOVERY DEADLINES**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Cooper Tire & Rubber Company (hereinafter referred to as "Cooper"), the Defendant in the above entitled and numbered cause, and files this its Second Unopposed Motion for Continuance and Extension of Discovery Deadlines, and would show the Court the following:

**I. SYNOPSIS OF MOTION**

1. The current trial date is set for October 31, 2005. The parties would show that there remains discovery to be completed in order for this matter to be properly prepared for trial

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including witness and expert depositions, and obtaining records. Additionally, currently set is the attached Federal Rule of Civil Procedure 1404 Motion pending in Cook County, Illinois that would impact this case considerably. *See* Exhibit A. Further, witnesses from out of state must be deposed and coordinated for trial. For these reasons we request a reasonable extension of time to conduct discovery and allow ample time for the Cook County Court to rule on the 1404 Motion.

## **II. SYNOPSIS OF CASE**

2. Plaintiffs filed suit for products liability, negligence, breach of express and implied warranty and gross negligence on July 6, 2004. The suit arises out of a single vehicle accident on June 19, 2004 near Moore, Texas in Frio County where five passengers were ejected. Angel Villalobos (seated in left rear seat) was killed in the accident and the driver (Augustine Villalobos) and three (3) passengers received injuries. The Plaintiffs filed their First Amended Complaint on February 22, 2005 adding Angelica Martinez as next friend of Angel Villalobos, Eduardo Villalobos, Rodrigo Villalobos and Gabriella Villalobos, minor children, and Arminda Uriostequi as next friend of Susanna Villalobos and Blanca Villalobos, minor children.

3. Augustin Villalobos (driver) and Carmen Villalobos (passenger) filed their lawsuit against Cooper on January 21, 2005 in Cook County. A 1404 Motion was filed and fully briefed on April 12, 2005. However, the Court has not ruled on said Motion.

4. Numerous expert depositions (many of which are outside of Texas) need to be taken and are being scheduled. Currently the depositions of Allen Kam, Glenn Follen and Steve Irwin have been noticed and the parties are working together to schedule other corporate representative depositions and experts.

## **III. ARGUMENT**

5. Given the pending 1404 Motion and the expert depositions it is not possible to complete all discovery in time to prepare for trial on October 31, 2005. Unless a continuance is granted,

the parties will be prejudiced in their ability to engage in meaningful discussions about the evaluation of this matter for mediation or otherwise, and certainly unprepared for a trial on the merits. Accordingly, Defendant's request a continuance of the trial until March 20, 2006 and extension of deadlines for five (5) months.

**IV. CONCLUSION**

6. This continuance is not sought for the purposes of delay only, but so that justice may be done. The parties request that the Court re-set this matter for March 20, 2006 in order for discovery to be conducted and to allow time for Cook County Court to rule on 1404 Motion.


**PRAYER**

WHEREFORE, PREMISES CONSIDERED, Cooper respectfully requests that this Court grant this unopposed continuance and for any other such further relief, either at law or in equity, to which it may show itself to be justly entitled.

Respectfully submitted,

**JOHNSON, SPALDING, DOYLE,  
WEST & TRENT, L.L.P.**

By: \_\_\_\_\_



T. Christopher Trent  
State Bar No. 20209400  
Federal ID No. 14244

**ATTORNEY-IN-CHARGE FOR DEFENDANT,  
COOPER TIRE & RUBBER COMPANY**

**OF COUNSEL:**

**JOHNSON, SPALDING, DOYLE,  
WEST & TRENT, L.L.P.**

R. Todd Marshall

State Bar No. 00784528

Federal ID No. 16679

Catherine H. Herrington

State Bar No. 24003237

Federal ID No. 23194

910 Travis, Suite 1700

Houston, Texas 77002

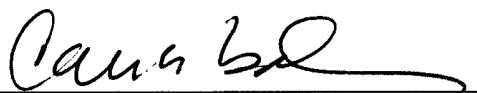
(713) 222-2323 – Telephone

(713) 222-2226 – Facsimile

**ATTORNEYS FOR DEFENDANT,  
COOPER TIRE & RUBBER COMPANY**

**CERTIFICATE OF CONFERENCE**

I conferred with Plaintiffs' counsel, Jason Hoelscher, and he is UNOPPOSED/AGREED with this motion.



Catherine H. Herrington

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was sent on September 12, 2005, via certified Mail:

Jason P. Hoelscher  
SICO, WHITE & BRAUGH, L.L.P.  
900 Frost Bank Plaza  
802 N. Carancahua  
Corpus Christi, Texas 78470

*Via Certified Mail*  
**#7003 0500 0004 4772 5437**



Catherine H. Herrington